IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Crl.MC.No. 2044 of 2007()

CRMP.1975/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM
CRIME NO.723/2007 OF CENTRAL POLICE
STATION, ERNAKULAM

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PETITIONER:

MUHAMADHALI, S/O. MUHAMMADH,
ARIYANKALAYIL HOUSE, NAYATHODU DESOM, ANGAMALY.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
CENTRAL POLICE STATION, ERNAKULAM THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2044 of 2007

Dated this the 10th day of July 2007

O R D E R

The petitioner is aggrieved by the order passed by the learned Magistrate under Section 451 Cr.P.C. A crime has been registered under the provisions of the NDPS Act. Contraband article - 200 amputes of a psychotropic substance was allegedly seized from the car on 12/5/2007 by the police. The car was seized by the police on 13/5/2007 and was produced before the learned Magistrate. The petitioner applied for release of the vehicle to him, claiming himself to be the owner entitled to possession thereto. In the R.C.book, it is endorsed that the vehicle has been purchased by the petitioner on 17/5/2007. The learned Magistrate naturally became suspicious. If the occurrence had taken place on 12/5/2007 and the car was seized by the police on 13/5/2007, how is it possible that the vehicle could have been transferred to the petitioner on 17/5/2007, queried the learned Magistrate. No satisfactory explanations were forthcoming and it is in these circumstances that the learned Magistrate proceeded to dismiss the application under

Section 451 Cr.P.C holding that the petitioner is not entitled to get interim custody of the car.

2. The learned counsel for the petitioner makes only one grievance. He submits that the learned Magistrate has not considered the claim for release in the proper perspective. Notice was not given to the learned Public Prosecutor and the police were not asked to give their response to the claim made by the petitioner. The petitioner was not given any opportunity to substantiate his claim by placing the relevant materials before the learned Magistrate. The learned counsel for the petitioner now makes only a short request. He prays that the impugned order may be set aside. The petitioner may be granted an opportunity to place all the relevant materials before the learned Magistrate and the learned Magistrate may be directed to dispose of the matter afresh, after considering the objections, if any, which the prosecution/the police wants to raise.

3. I am satisfied that the said request can be accepted. The learned Magistrate cannot be said to be in any gross error in passing the impugned order as on the face of it some confusion is aroused in the mind of the court. But certainly the petitioner

must have been granted an opportunity to disabuse such apprehension and substantiate his case.

4. In the result, this petition is allowed. The impugned order, Annexure A2 is set aside. The learned Magistrate is directed to dispose of Crl.M.P.No.1975/2007 afresh, after giving the petitioner an opportunity to place all relevant materials before the learned Magistrate. The prosecution shall also be given an opportunity to raise and substantiate their objections, if any. Expeditious orders shall be passed by the learned Magistrate.

5. Hand over copy of this order to the learned counsel for the petitioner for production before the learned Magistrate. Parties may appear before the learned Magistrate on 17/7/2007 to continue the proceedings.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007